

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| CNS Internet Services (CNS Internet) |) | File No.: EB-IHD-21-00032223 |
| |) | |

CITATION AND ORDER

**Failure to File Forms 477
Failure to Timely File Forms 477**

Adopted: June 21, 2021

Released: June 21, 2021

By the Division Chief:

I. NOTICE OF CITATION

1. This **CITATION AND ORDER** (Citation), notifies CNS Internet Services (CNS Internet) that it failed to file FCC Forms 477 twenty-seven times and filed late two times. We therefore direct CNS Internet to take immediate steps to comply with the FCC Form 477 reporting rules and instructions. If CNS Internet fails to comply with these laws, it may be liable for significant fines.

2. **Notice of Duty to Comply with the Law:** We issue this Citation pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.¹ Accordingly, CNS Internet is hereby on notice that it must comply with sections 1.7001 and 1.7002 of the Commission's rules.² If CNS Internet subsequently engages in any conduct of the type this Citation describes — and specifically any violation of sections 1.7001 and 1.7002 of the Commission's rules — CNS Internet may be subject to civil penalties, including but not limited to substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.³

II. BACKGROUND

3. To accomplish its broadband goals, the Federal Communications Commission (Commission or FCC) requires facilities-based broadband service providers to file FCC Form 477 twice

¹ See 47 U.S.C § 503(b)(5).

² 47 CFR §§ 1.7001, 1.7002; *FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions for Filing as of December 31, 2019 and Beyond* at 32 (*December 31, 2019 FCC Form 477 Instructions*). Section 1.7001 directs FCC Form 477 filers to make filings “in accordance with the Commission’s rules and instructions to the FCC Form 477,” and warns that “[f]ailure to file the FCC Form 477 in accordance with the Commission’s rules and instructions to the Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.” From time-to-time the Commission has issued a Public Notice shifting the filing data beyond March 1st or September 1st because those data coincide with a date that the Commission was officially closed (e.g., due to a weekend of Federal holiday) or because of maintenance of the electronic filing system.

³ See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability “would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent.*”) (emphasis added).

each year. The March 1 filing reports data as of December 31 of the prior year, and the September 1 filing reports data as of June 30 of the current year.⁴ Form 477 contains important information that assists the Commission in carrying out its statutory mandates, including the requirement that the Commission “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁵ Form 477 filings contain service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.⁶ The Commission uses data obtained from FCC Form 477 to “describe the deployment of broadband infrastructure,”⁷ and the collected data enable the Commission to appropriately target universal service funds to unserved and underserved regions and to meet public safety obligations. Federal and state agencies and the general public also benefit from the data reported on Form 477.

4. Since 2005, and beginning with the filing due September 1, 2005 for data as of June 30, 2005, the Commission has required “all facilities-based providers” of fixed and mobile broadband connections to end-users to submit counts of broadband connections in FCC Form 477.⁸ As explained in a related 2004 FCC news release, this includes facilities-based providers in rural areas, regardless of their size.⁹ Fixed wireless facilities-based broadband providers have been required to file both “deployment” and “subscription” data on their FCC Form 477 filings since 2014.¹⁰ The Commission has underscored the importance of timely and accurate FCC Form 477 filings through enforcement advisories and enforcement action.¹¹

⁴ See 47 CFR §§ 1.7001, 1.7002.

⁵ 47 U.S.C. § 1302(a).

⁶ See *id.* § 1302(b).

⁷ *December 31, 2019 FCC Form 477 Instructions* at 4.

⁸ *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340, 22345, para. 8 (2004) (*2004 Broadband Reporting Order*) (emphasis in original); *FCC Announces Electronic Posting of OMB-Approved Form 477 for the September 1, 2005 Filing and Data Collection Workshop to be Held on June 29, 2005*, Public Notice, 20 FCC Rcd 10454, 10456 (WCB 2005) (*OMB-Approved Form 477 Public Notice*). In 2008, the Commission ordered providers of interconnected voice over internet protocol (interconnected VoIP) service to begin reporting subscribership information on Form 477. *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9705, para. 28 (2008).

⁹ See News Release, FCC, FCC Improves Data Collection to Monitor Nationwide Broadband Rollout, Agency Also to Collect Better Information About Rural and Underserved Areas (Nov. 9, 2004), <https://www.fcc.gov/document/fcc-improves-data-collection-monitor-nationwide-broadband-rollout>; see also *2004 Broadband Reporting Order*, 19 FCC Rcd at 22345, para. 8.

¹⁰ See *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9888, 9896-97, 9902-08, 9913-18, paras. 3, 20, 32-41, 56-68 (2013); *Additional Information for Form 477 Filers on New Data Submission Interface*, WC Docket No. 11-10, Public Notice, 29 FCC Rcd 3174 (WCB 2014); *Wireline Competition Bureau Releases Data Specifications for Form 477 Data Collection*, WC Docket No. 11-10, Public Notice, 28 FCC Rcd 12665 (WCB 2013).

¹¹ See *Barrier Communications Corporation d/b/a BarrierFree*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186 (2020) (*BarrierFree NAL*); *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196 (EB 2015) (*Rio Verde Wireless NAL*), cancelled by Order, 30 FCC Rcd 10597 (EB 2015) (consent decree admitting violations and paying civil penalty); *FCC Enforcement Advisory – Providers Must File a Complete and Accurate Form 477 Report Every Six Months*, Public Notice, 30 FCC Rcd 10853 (EB 2015); *FCC Enforcement Advisory – Providers Are Reminded that They Must File Complete and Accurate Form 477 Reports Every Six Months*, Public Notice, 26 FCC Rcd 16769 (EB 2011).

III. APPLICABLE LAW AND VIOLATIONS

5. Section 1.7001 of the Commission's rules requires, in relevant part that, "facilities-based providers of broadband service ... file FCC Form 477 data." Section 1.7002 of the Commission's rules requires this data must be filed semi-annually.¹²

6. CNS Internet is a facilities-based provider of broadband connections to end users.¹³ The Commission requires broadband service providers, including Wireless Internet Service Providers (WISPs) such as CNS Internet, to file data on their broadband services.

7. According to CNS Internet, it began offering regulated services in 1995, and currently provides high speed wireless broadband service.¹⁴ CNS Internet, however, did not make its first Form 477 filings with the FCC until 2020, and missed the filing deadline when it did file. Indeed, CNS Internet's Form 477 filing that was due on September 3, 2019 was filed over a year later on September 11, 2020.¹⁵ CNS Internet also failed to timely file its Form 477 that was due on March 2, 2020, and filed its data on August 12, 2020, over five months late.¹⁶

8. Violations of the FCC Form 477 filing requirements are significant because FCC Form 477 is a critical fact-gathering instrument that informs the Commission's efforts to advance broadband availability. Moreover, in many instances service providers submitting FCC Form 477 data have the best, if not the only, reliable data about where their facilities are located and which areas they can serve. Timely data is essential to the mission of fostering the availability of broadband services across the United States, and failing to provide it materially impairs the Commission's ability to assess broadband deployment and to measure the subscribership upon which Commission policy is based.

9. We conclude that CNS Internet violated sections 1.7001 and 1.7002 of the Commission's rules by failing to file twenty-seven Forms 477 between 2005 and 2018, and failing to timely file its Forms 477 that were due on March 2, 2020, and September 3, 2019.¹⁷

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

10. CNS Internet may respond to this Citation within 30 calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to CNS Internet's place of business. The Commission Field Office nearest CNS Internet is located in Chicago, Illinois.

11. If CNS Internet requests a teleconference or personal interview, contact Conor O'Donovan at (202) 418-1639. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If CNS Internet prefers to submit a written response with supporting documentation, it must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph below.

¹² See 47 CFR § 1.7002.

¹³ FCC Form 477 Filed for data as of June 30, 2020 for CNS Internet Services (filed Aug. 12, 2020 at 11:41:59) (FCC Form 477 Filed for data as of June 30, 2020); *see also* CNS Internet, *About Us*, <https://mycns.net/> (last visited May 6, 2021).

¹⁴ See CNS Internet, *About Us*, <https://mycns.net/> (last visited May 6, 2021).

¹⁵ FCC Form 477 Filed for data as of June 30, 2019 for CNS Internet Services (filed Sept. 11, 2020 at 18:00:56) (FCC Form 477 Filed for data as of June 30, 2019).

¹⁶ FCC Form 477 Filed for data as of December 31, 2019 for CNS Internet Services (filed Aug. 12, 2020 at 11:42:56) (FCC Form 477 Filed for data as of Dec. 31, 2019).

¹⁷ See 47 CFR §§ 1.7001, 1.7002.

12. All written communications must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, and must include the Case No. referenced in the caption. The written statement shall also be emailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and to Conor O'Donovan at Conor.O'Donovan@fcc.gov.

13. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, CNS Internet should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. CNS Internet should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. CNS Internet should send an e-mail to FCC504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

14. We advise CNS Internet that it is a violation of section 1.17 of the Commission's rules¹⁸ for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

15. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.¹⁹

16. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

17. Finally, we warn CNS Internet that, under the Privacy Act of 1974,²⁰ Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure CNS Internet's compliance with the Act and the Commission's rules.²¹

V. FUTURE VIOLATIONS

18. If, after receipt of this Citation, CNS Internet again violates sections 1.7001 and 1.7002 of the Commission's rules by engaging in conduct of the type described herein, the Commission may

¹⁸ 47 CFR § 1.17.

¹⁹ 18 U.S.C. § 1001.

²⁰ 5 U.S.C. § 552a(e)(3).

²¹ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

impose monetary sanctions for each such violation.²² The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.

VI. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,²³ CNS Internet Services must cease and desist from failure to file and failure to timely file FCC Forms 477, in violation of sections 1.7001 and 1.7002 of the Commission's rules.²⁴

20. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Stan Siems, Owner, CNS Internet Services, 102 Warbler Avenue, Ackley, Iowa 50601.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Gee
Division Chief
Investigations and Hearings Division
Enforcement Bureau

²² 47 U.S.C. § 503(b)(2)(B); *see generally* Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, 35 FCC Rcd 14879 (EB 2020); *see also* Federal Communications Commission, Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 86 Fed. Reg. 3830 (Jan. 15, 2021).

²³ 47 U.S.C. § 154(i), (j).

²⁴ 47 CFR § 1.7001.